

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 210 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

COMMISSIONER OF INCOME-TAX

Versus

JETHALAL BHOGILAL SHETH

Appearance:

MR MANISH R BHATT for Petitioner

MR SN SOPARKAR for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 23/09/98

ORAL JUDGEMENT

(per R.K. Abichandani, J.)

The Revenue has suggested the following question
seeking a direction on the Income Tax Appellate Tribunal
to forward statement of case in respect thereof under
Sec. 256(2) of the Income-tax Act, 1961.

" Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that direction given (in its original order dtd. 25.10.1996) to the assessing officer to tax the assessee with Rs. 3,85,634/- in the year under consideration and he will be at liberty to take necessary action against the assessee or against concerned persons for taxability of the remaining amount in the appropriate year, was neither specific finding of the Tribunal nor there was any direction of the Tribunal to the department about the year of taxability?"

2. In its order dated 25.10.1996, the Tribunal held that the department can be at liberty to tax all the amount of Rs. 10 lakhs in the year in which the assessee was found to be the owner of the amount, but, in the year under consideration, the assessee was simply found to be the owner of Rs. 3,85,654 which was recovered. The Tribunal observed that the amount of Rs. 4 lakhs said to have been deposited with Bhaijibhai was in dispute and the assessee could not be taken to be the owner thereof in the year under consideration. It as observed that the Assessing Officer was under an obligation to inquire into and to reach at the findings of ownership of Rs. 4 lakhs either in favour of the assessee or in favour of "anamatdar" or partner of the assessee to whom money was said to have been returned and then to decide the year of its taxability. However, as that was in dispute, the said amount could not be treated as owned by the assessee in the year under consideration. The Tribunal was therefore of the opinion that only the amount of Rs. 3,85,654 was required to be taxed in the hands of the assessee in the year under consideration and the rest of the amount was to be taxed in the year when the assessee was held to be its owner and that too after recording specific findings of its ownership and the date thereof and as to the financial year that would be the relevant year of taxability in the hands of the assessee. The Tribunal, therefore, directed the Assessing Officer to tax the assessee for the amount of Rs. 3,85,654 in the year under consideration. The Tribunal simultaneously observed that the Assessing Officer would be at liberty to take necessary action against the assessee or against the concerned persons for taxability of the remaining amount in the appropriate year. There was nothing wrong with the observation made of this nature recognising the power of the Assessing Officer to take necessary action as may be called for under the law and this observation of the Tribunal which only meant that the Assessing

Officer was at liberty to take the steps in accordance with law against the assessee was not a direction, because, no question of giving of any direction in that regard would arise. If the law empowers the authority to take the necessary action, then it should be left to that authority to take such action in accordance with the provisions of law and within the ambit of his powers. No question of law, therefore, arises from the said observation of the Tribunal which was proper, and, even without which also it was open for the Assessing Officer to take such action as was necessary under the law against the concerned persons for the taxability of the remaining amount in the appropriate year.

3. The application is, therefore, rejected . Rule is discharged with no order as to costs.

(hn)